

Consideration of request for preliminary adoption of rule governing special watercraft zone on Lake Manitou; Administrative Cause No. 08-066D

In 2005 an administrative rule was created which established an ecozone to protect about 43 acres of a shallow water area in Lake Manitou, locally known as the "Prairie", from boating activity. The Prairie was once covered with emergent vegetation, primarily rushes, and it was believed that power boating through the area and the resulting wave action was a leading cause of the loss of emergents.

The Manitou Lake Association petitioned for the creation of the ecozone; however, some objections were raised, which resulted in the inclusion of a sunset clause into the rule of April 30, 2008. In September of 2007 the Department began the process of removing the sunset clause from the rule to make the rule permanent. However, final adoption of the rule was ultimately rejected by the Commission primarily because there was not enough time to get the amendment approved before the rule expired. The hearing officer's report also noted some issues expressed by citizens. A public meeting was held on May 29, 2008 to address those concerns. The public responded positively to the DNR staff's answers to those concerns. Those answers are summarized in a document entitled "DNR Staff Position on Temporarily Re-establishing the "Prairie" Ecozone in Lake Manitou". The DNR Director then authorized a temporary rule that is currently in effect until July 1, 2009.

The Department judges the Lake Manitou ecozone to have been effective for the following reasons.

- 1) Boating safety issues have been addressed as no incidents due to motor boating within the shallow waters of the zone were reported to the Division of Law Enforcement.
- 2) A small stand of rush was preserved and the opportunity was there for the bed to expand naturally or for restoration efforts to take place.
- 3) Prior to the lake being treated for hydrilla, nearly the entire 43 acre protected area was covered with underwater aquatic vegetation that provided fish habitat, acted to reduce wave action and bank erosion, and tied up nutrients and sediments that helped to reduce water turbidity and the production of algae.
- 4) An area was provided to anglers where they would not be disturbed by motorboats, personal watercraft and the waves generated by those craft.

The Department is pursuing a permanent watercraft protection zone for Lake Manitou because the above four reasons are likely to continue in perpetuity. The rule is not judged as an additional restriction on recreational boating because the shallow nature of the zone would normally preclude high speed boating.

**DNR STAFF POSITION ON TEMPORARILY RE-ESTABLISHING THE
“PRAIRIE” ECOZONE IN LAKE MANITOU**

BACKGROUND

On April 7, 2003, Orv Huffman, President of the Lake Manitou Association, Inc., filed a petition with the Commission's Division of Hearings seek consideration for a special watercraft zone at “the Prairie” on Lake Manitou. As stated in the pertinent parts of his letter:

As president of the Manitou Lake Association, I'm writing to you...to ask your department to do a feasibility study on roping off the “prairie” in front of the Moose lodge for protection of the natural grasses.

We feel the present situation is dangerous to patrons new to the lake for the undergrowth and old tree stumps. We also feel it is a natural filter for the lake as well as a great breeding ground for fish.

We will furnish the buoys to make it a no power boating zone, and the local chapter of Ducks Unlimited has volunteered to take the buoys in and out of the lake.

The Department staff agreed with the safety and ecological reason for the ecozone. On October 1, 2005, 312 IAC 5-6-5.5 became effective, which established an ecozone to protect about 43 acres of a shallow water area in Lake Manitou locally known as the "Prairie" from boating activity. However, the Department recommended a three year sunset clause be placed in the rule. Through some quirk in the rule development the law expired five months short of three years (April 30, 2008) and only covered two boating seasons. It took decades for the emergent vegetation to decline to point where it is today and it is unrealistic to expect it to recover in less than three years.

The invasive plant hydrilla was found in the lake one year following the establishment of the ecozone. This prompted an eradication effort beginning in 2007 and is expected to continue through 2009. The treatment in 2007 removed all submerged native vegetation from the ecozone and may have affected the emergent vegetation. A planned emergent restoration project for the Prairie was also canceled.

In 2008 the Department began an effort to remove the sunset clause from the Lake Manitou rule to make it a permanent rule. Department staff concluded that the sunset provision was far too short a time period within which to evaluate the ecozone particularly since the discovery of hydrilla. The shallow nature of the water presented ongoing public safety issues that needed to be addressed and the re-establishment of vegetation on the Prairie is a necessary part of restoring the natural ecological functions of the lake as well as providing needed habitat for fish and wildlife and other aquatic organisms.

A public hearing officer's report presented on February 29, 2008 stated:

Citizen comments indicate several concerns with the underlying rule section. Principle among these is what rehabilitation efforts will be performed on the Prairie in an effort to return vegetation to a more natural state. If the Division of Fish and Wildlife is unable to perform successful rehabilitation efforts, local support for the rule section is problematical. Important concerns were also expressed as to the potential safety hazard resulting from the location of the southeastern corner of the ecozone, and there was a suggestion a portion of the ecozone may extend unnecessarily into deep waters of Lake Manitou. Also, citizens seek to define responsibilities for placing and removing buoys from the lake. These issues also need to be addressed, with responses probably coming most notably from the Division of Law Enforcement.

Ultimately, whether to delete the “sunset” provision in 312 IAC 5-6-5.5(d) is a policy question within the sound discretion of the Natural Resources Commission. For the deletion to be effective, the amendment must be filed with Legislative Services Agency at least 30 days in advance of activation of the “sunset clause” (that is, by March 31, 2008). Accomplishing this timing would require aggressive pursuit by the Department of Natural Resources following final adoption, as well as the special assistance of the Attorney General and the Governor to review and approve the changes within substantially shorter timeframes than are authorized by statute.

On March 18, 2008 The Natural Resources Commission rejected final adoption of a permanent Lake Manitou rule likely for the following reasons.

1. There was not enough time to get the amendment approved before the rule expired
2. Local citizens may not support the ecozone if the Department does not restore emergent vegetation in the zone.
3. Local citizens may not support the ecozone due to potential safety issues from perceived congestion in the southeast section of the ecozone.
4. Some of the buoys may be placed in unnecessarily deep water.
5. Responsibility for maintaining the buoys needs to be cleared up.

A temporary rule was presented to department staff to extend the ecozone rule for a year to allow time to develop a new permanent rule. The Division of Law Enforcement felt that the above citizen concerns should be addressed before they can support a temporary rule. A public meeting has been scheduled for May 29, 2008, in Rochester, Indiana, to address concerns.

DEPARTMENT STAFF POSITIONS ON CITIZEN CONCERNS REGARDING A TEMPORARY RULE RE-INSTATING THE ECOZONE

A number of research studies have shown the important relationship between aquatic vegetation and the impacts power boating has on this vegetation. A report by Thomas Crisman (History of Cultural Eutrophication at Lake Manitou, Indiana and Prospects for its Management, 1987) recognized the importance of aquatic plants to the ecological health of the lake. There have been several DNR Lake and River Enhancement project within the lake’s watershed to restore wetlands and protect riparian corridors. The Prairie ecozone is part of the long term measures needed to address the overall ecological issues facing Lake Manitou. A temporary rule would continue the protection of the ecozone long enough to develop a permanent rule. During the permanent rule development the DNR would have an opportunity to detail the supporting studies and to solicit formal public comments.

One of the main reasons for originally establishing the ecozone was to address public safety issues surrounding boating through this shallow area of the lake. Doug Keller (DNR Aquatic Invasive Species Coordinator) note while hydrilla tuber sampling on May 13, 2008, that there was a public safety issue in the ecozone area in the absence of buoys. “There was no vegetation to indicate when you were nearing shallow water; consequently, the motor bogged down and plums of sediment rose in the water before you knew you were in the area.” The one small stand of bulrush was not present to help identify the area, hopefully because the ice took it out and it will grow back later this summer. This area could be particularly dangerous to high speed boaters and lends some urgency to establishing safety, if not ecozone, buoys as soon as possible.

Originally citizens apparently believed that restoration of the bulrush beds was the main reason for establishing the ecozone. They equated success of the ecozone with emergent re-vegetation of the area. The Department did have plans to experimentally plant bulrush in the ecozone until

hydrilla treatments precluded that project. However, it should be understood that there are several other success criteria for the ecozone besides just restoring emergent vegetation.

Even though the ecozone was only in place for two boating seasons, the whole 43 acres was covered with native aquatic vegetation by the summer of 2006. This vegetation stabilized the sediments, absorbed excess nutrients that would otherwise have gone into algae production and provided excellent fish and wildlife habitat. There was also anecdotal information that anglers were happy with the area because of fishing success and the lack of power boating through the area. In 2006 the ecozone was ecologically functional and provided the opportunity for the emergent vegetation to naturally expand.

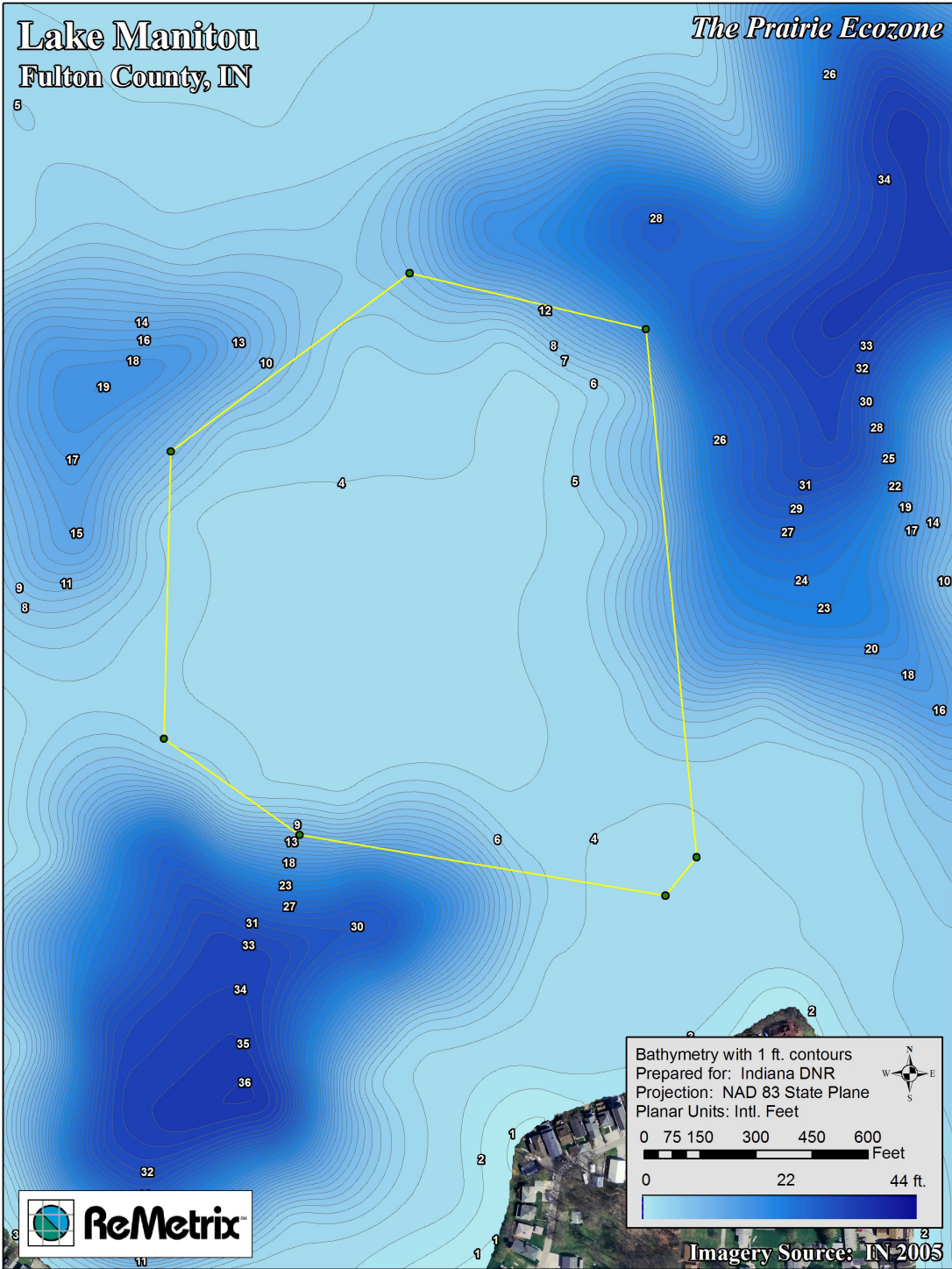
This level of functionality is achievable without a Department emergent restoration project and is the primary objective for maintaining the ecozone. The Department cannot be obligated to an emergent restoration project as funding and personnel may not be available. However, depending on results of a project to examine techniques for emergent and aquatic plant restoration, the Lake and River Enhancement program may fund such a project on Lake Manitou once the hydrilla problem has been taken care of.

There were also some citizen concerns about potential boating safety issues that have been created by the ecozone, particularly in the southeaster corner. This is an area of shallow water that contains the last stand of bulrush in the prairie. Both from an ecological point and a public safety point it would be much better to keep this area closed to boating than to open the area up to any potential hazards that may result from boating congestion. Boaters would need to observe boating regulations and adjust to changing circumstances the same as would be necessary in other areas with navigational restrictions.

There was one public comment that some of the buoys may be placed unnecessarily in deep water. The temporary rule would just reiterate the current GPS coordinates; however, the Department will re-evaluate the positioning of the buoys during the development of the permanent rule.

The Lake Manitou Association has agreed to be responsible for placing and retrieving the buoys during the boating season. The buoys were originally purchased by the State. Conservation officers will check the GPS positioning of the buoys when they visit the lake. Enforcement of the ecozone provision will largely be done by Conservation Officers, but any law enforcement agency has the authority to do so.

tmf 6/13/08



TITLE 312 NATURAL RESOURCES COMMISSION

**Proposed Rule
DIGEST**

Adds 312 IAC 6-6-5.5 to establish a watercraft protected zone in an area known as the “prairie” in Lake Manitou, Fulton County. Effective 30 days after filing with the Publisher.

312 IAC 5-6-5.5

312 IAC 5-6-5.5 Lake Manitou; special watercraft zones

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14; IC 32-19-1-1

Sec. 5.5. (a) This section establishes restrictions on the operation of watercraft on Lake Manitou in Fulton County.

(b) Except as provided in subsection (c), a person must not operate a watercraft in an area, commonly known as the Prairie, which is enclosed by a line of buoys placed as follows:

- (1)** SPC 2114199 (UTM 4544799) north and SPC 185587 (UTM 568631) east.
- (2)** SPC 2114362 (UTM 4544844) north and SPC 184604 (UTM 568331) east.
- (3)** SPC 2114620 (UTM 4544921) north and SPC 184241 (UTM 568219) east.
- (4)** SPC 2115391 (UTM 4545156) north and SPC 184259 (UTM 568221) east.
- (5)** SPC 2115871 (UTM 4545305) north and SPC 184900 (UTM 568414) east.
- (6)** SPC 2115720 (UTM 4545262) north and SPC 185534 (UTM 568608) east.
- (7)** SPC 2114303 (UTM 4544831) north and SPC 185670 (UTM 568656) east.

(c) A person is exempted from subsection (b) if each of the following requirements is satisfied:

- (1)** The watercraft is not a motorboat or is a motorboat that has the motor turned off.
- (2)** The watercraft is not operated in excess of idle speed.
- (3)** The watercraft is not anchored. (*Natural Resources Commission, 312 IAC 5-6-5.5*)